

*Macmillan & Co.*

# TREATISE

## ON THE JURISDICTION AND PROCEEDINGS

OF

# JUSTICES OF THE PEACE,

IN

## CIVIL SUITS IN NEW-JERSEY;

WITH AN

# APPENDIX,

CONTAINING,

ADVICE TO EXECUTORS, ADMINISTRATORS, AND GUARDIANS;  
AN EPITOME OF THE LAW OF LAND-LORD AND TENANT;  
DIRECTIONS AND FORMS OF PROCEEDING FOR JUSTICES OF THE PEACE IN CRIMINAL CASES;

THE LAW OF SHERIFFS, CORONERS, CONSTABLES, AND OTHER TOWNSHIP OFFICERS;  
THE LAW AND FORM OF PROCEEDING RELATING TO THE LAYING OUT AND VACATING ROADS.

INTERSPERSED WITH  
PROPER FORMS AND INSTRUCTIONS.

THE THIRD EDITION, REVISED, CORRECTED, AND CONSIDERABLY ENLARGED.

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BURLINGTON, N. J.

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*District of New-Jersey.*

BE IT REMEMBERED, That on the third day of August, in the thirty-eighth year of the independence of the United States of America, DAVID ALLISON, of the said district, hath deposited in this office the title of a book, the right whereof he claims as proprietor, in the words following, to wit:

*"A Treatise on the jurisdiction and proceedings of Justices of the Peace, in Civil Suits in New-Jersey: with an Appendix, containing, Advice to Executors, Administrators and Guardians; An Epitome of the law of Landlord and Tenant; Directions and forms of proceeding for Justices of the Peace in Criminal Cases; The law of Sheriffs, Coroners, Constables, and other Township Officers; The law and form of proceeding in cases relating to Highways; An abridgment of all the decisions of the Supreme Court, on the act for the trial of small causes. Interspersed with proper Forms and Instructions. The third edition, revised, corrected and considerably enlarged. By Wm. Griffith, Esq. Counsellor at Law."*

In conformity to the Act of the Congress of the United States, entitled, "An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned;" and also to the Act, entitled, "An Act supplementary to an Act, entitled, an Act for the encouragement of learning, by securing the copies of maps, charts, and books to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

ROBERT BOGGS,  
Clerk of the District of New-Jersey.

## PREFACE

### TO THE FIRST AND SECOND EDITIONS.

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THE first part of this publication, contains an attempt to explain the theory, and fix the forms of procedure, in the courts for the trial of small causes, in New-Jersey. That such a work, if properly executed, would furnish great assistance to magistrates, and prevent much of the litigation and injustice which too often flow from mistakes in *legal* forms, may reasonably be supposed: but in what degree this essay can pretend to a satisfactory execution of such a plan, is not for its author to pronounce. The number of gentlemen in commission, their various opinions, and different habits, leave me no hope, that in its outline or filling up it will secure entire approbation. Characters experienced in business, may, in many things, regard it as too *minute*; whilst others, less versed in legal matters, might wish it more *dilated*. Differences of opinion also, may arise upon *legal* points advanced in the book: to those who disagree with me, I can say, that I have no desire to make proselytes, every gentleman has a right to his opinion; I may assert, however, for mine, that in laying down the construction of legislative acts, and in discussing general questions, I am not conscious of having adopted any exposition, *merely* in favour of any particular theory of my own; I have endeavoured throughout, to adapt my commentary to the plain meaning of the legislature, the general principles of law, and the decisions of the supreme court. With respect to these, I had it in view, at one time, to insert such as were in my hands, in the form of short *reports*; but on reflection, I gave it up, preferring the method of interweaving the rules established by them, as principles, into the body of the work; by which the purpose is better attained, and at much

**less expense.** It will appear that the *forms*, attached to the different titles, are very copious, and have been drawn to the best of my judgment, with a strict attention to legal requisites: if they should differ from some in common use, the inconvenience cannot be great, nor need to be long.

The *second part* of this book, will be received under circumstances more favourable perhaps, to general approbation. Some professional experience, and a great deal more derived through the channel of the surrogate's office, which I have held for some years, has discovered to me the perplexities which they lie under, who have the management, or who expect the enjoyment of property given by will, or fallen by intestacy.

The little tract, containing *advice to executors, administrators, and guardians*, making part of the *Appendix*, will be found to contain almost every article of instruction necessary for the right management of *decedents' estates*, and full information to all interested, of their reciprocal rights and duties.

The law of *landlord* and *tenant*, of *distress* and *replevin*, with the *Scrivener's Guide*, which make out the rest of the *Appendix*, are of very general concern, and being thrown into a small compass, with proper forms and directions, may be considerably useful.

Although my leading view has been, to construct a book, which might benefit those who are in private situations and employments in the country; yet I have not been unmindful of professional gentlemen, who, upon looking through this work, will find many of its titles adapted to afford them some assistance in the *practice* of the subordinate branches of the law.

BURLINGTON, 1st May, 1797.

## PREFACE TO THE THIRD EDITION.

THE legislature having introduced great changes since the *first* edition of this Treatise,\* in the jurisdiction and proceeding of Justices of the Peace, a *revisal* became indispensable, in order to prevent the embarrassment and error which constantly resulted from the use of it as first published.

In the present book, it has been attempted to obviate those inconveniences by conforming the Treatise to the existing law: In doing this, the matter of the work, and much of its form, have undergone an almost entire change; and the author flatters himself that it will be found not only enlarged, but extensively improved, in the whole scope and execution of it as a guide to magistrates.

To the contents of the *Appendix* in the first and second editions, have been added in *this*, directions and forms for justices of the peace in *criminal* cases; the law of sheriff, coroners, and other township officers, and in cases of highways, &c. forming almost a complete *digest* of whatever relates to these important, and in some respects, difficult subjects: It were needless to observe how greatly this has added to the labour of the compilation, as well as to its usefulness,—should the execution be found adequate to the design. In presenting this *revised* Treatise and *new* Digests to the publick, the author is bound to acknowledge the great obligations he is under to a gentleman of the bar,† for his friendly and persevering assistance through the whole. The aid derived from his knowledge of the statutes, and his practical ability in

\* 1796.

† Charles Kinsey, Esq.

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*Note.* That the forms against which an asterisk \* is placed, are not inserted on an idea that it is necessary to draw them up in so precise a manner, but it is done rather with a view to point out what should in substance be pleaded, or alleged in such cases to the justice, who will enter the matter on his docket.

For the principal forms in the Appendix, the reader may be referred to page 227 to 255, as relates particularly to executors and administrators; 261 to 264, 271 to 275, as respects landlord and tenant; 281 to 284, in regard to replevin; and to the general heads in the latter part of the volume.

ner\* with the said C. D. and ought to have joined with him in bringing the said action, and this he is ready to prove.

A. B.

2d. Where all the persons proper to be made defendants are not joined in the action.

A. B.      }      On a summons in debt for §      be-  
At suit of      }      forc justice W. W.  
C. D.      }

The said A. B. cometh at the return of the summons and  
prays that the action brought against him by the said C. D.  
may be abated for this, to wit, that one E. F. is partner† with  
this defendant and ought to have been joined with the said  
A. B. as a defendant in the said action, and this he is ready  
to prove. A. B.

A. B.

#### **IV. Concerning the different kinds of actions cognizable by a Justice of the Peace.**

THE act directs, † “ That every suit of a civil nature at law, where the debt, balance, or other matter in dispute, does not exceed, exclusive of costs, the sum or value of sixty dollars, shall be, and hereby is made cognizable before any justice of the peace of any county in this state, who is hereby authorized to hold a court within such county, to hear, try, and determine the same according to law, although the cause of action did not arise in the said county; and further, that the said court shall be a court of record, and vested for the purposes aforesaid, with all such power as is usual in courts of record of this state: *Provided always*, That this act shall not extend to any action of replevin, slander, trespass, for assault, battery or imprisonment, or to any action wherein the title of any lands, tenements, hereditaments, or other real estate, shall or may in any wise come in ques-

\* Co-administrator, co-executor, &c. as the case is.

† Ibidem.

¶ Pat. 313, sec. 1.

tion." And by the supplement, passed November 30th, 1801,\* it is enacted, "That every suit of a civil nature at law, where the debt, balance, or matter in dispute does not exceed the sum of one hundred dollars, exclusive of costs, shall be, and is hereby made cognizable before any justice of the peace of any county in this state, who is hereby authorized to hold a court within such county, to hear, try, and determine the same according to law, and according to the same rules, regulations and exceptions, made and provided in the before recited act for the trial of causes not exceeding sixty dollars, and according to a supplement to said act, passed February the sixteenth, seventeen hundred and ninety-nine."

The actions most common before justices of the peace, and which may sufficiently comprehend the cases usually occurring are,

- 1st. Debt.
- 2d. Covenant.
- 3d. *Trespass with force and arms.*
- 4th. *Trespass on the case.*
- 5th. Attachment.

As gentlemen in the commission very frequently err, in stating the true nature of the plaintiff's demand in the summons or warrant; and these mistakes do sometimes occasion reversals of their judgments upon certiorari in the supreme court; it may, I hope, lessen their embarrassments on this subject, if I place under each head of action, the cases which fall within the description of such action.

1st. Cases in which the summons or warrant, should be to answer in debt.

The supplement passed March 1st, 1804,† directs, That all suits brought or commenced before any justice of the peace on any bond or other specialty, note of hand, bill of exchange, book account, or any other demand formed on simple contracts for the payment of money only, shall be in the name and style of actions of debt, and not otherwise.

\* Bloom. 73.

† Bloom. 74.

Therefore the action must be debt,

- 1st. Where one sues, on a former judgment.
- 2d. on a bond.
- 3d. on a sealed note or bill.
- 4th. on an agreement sealed, to pay a particular sum of money.
- 5th. on an act of assembly to recover penalties.\*
- 6th. on a lease for a rent certain.
- 7th. on a note of hand or agreement not sealed.
- 8th. for wages for work and labour done.
- 9th. for articles sold and delivered.
- 10th. for money lent.
- 11th. for money received by defendant for plaintiff.
- 12th. for money paid to the use of the defendant at his request.
- 13th. on special contracts not under seal, for breach of which, damages have accrued to the plaintiff.
- 14th. on all implied contracts, for breach of which the plaintiff is entitled to damages.

2d. Cases in which the summons or warrant should be, to answer in covenant.

This action lies only upon agreements under seal; and is proper in all cases, where there is an agreement, or covenant to do, or not to do some particular thing, and no precise sum is fixed on in the deed as a penalty for the breach of it; or if such sum is fixed, the party suing prefers an

\* As on the timber act to recover £3 per tree. No mistake is more common than to bring trespass on this act, which is entirely erroneous, and for which judgment will be reversed.

action for damages, to a suit for the penalty,\* in either of which cases, neither debt nor assumpsit would be a proper form of action, but covenant.

This action may be used,

- 1st. On a covenant to pay rent.
- 2d. On a covenant for quiet enjoyment of premises leased or sold.
- 3d. On a covenant to save harmless, or keep indemnified.
- 4th. On a covenant not to assign premises leased.
- 5th. On a covenant to keep in repair.
- 6th. On a covenant to make a title, or further assurance of title.
- 7th. On a covenant to pay taxes.
- 8th. On a covenant not to plough meadows, commit waste, and other usual covenants in leases.
- 9th. On agreement, under seal, to do work, deliver a horse, &c.†
- 3d. Cases in which the summons or warrant should be to answer in trespass with force and arms.

This action is proper when the defendant has forcibly done injury to the plaintiff in respect of his goods or lands; and for which his claim of damage doth not exceed one hundred dollars.

1st. *To his goods as,*

- 1st. For wrongfully taking his horse, hog, or other live chattel.
- 2d. For taking his fowls, pigeons, fish, &c.

\* In agreements and covenants, a penalty is often inserted—for this debt will lie; but sometimes the penalty is too small to cover the damage, and then covenant is the better action; for in that action he is not confined to the penalty, but may recover more or less: and sometimes the penalty is beyond a justice's jurisdiction, and yet the damage within it; and in this case covenant is the proper action, and not debt.

† As the supplement, Bloom. 74, directs debt to be brought in case the demand arises on a specialty; I presume actions of covenant are not now to be used; but not being certain of this, I have continued this class as before.

- 3d. For taking his furniture, boat, wood, bond, money, deeds, clothes, hay, or any other dead chattel.
- 4th. For beating, wounding, disabling, or killing (unjustifiably and to his damage) a man's horse, ox, sheep, hog, or other live thing.\*
- 5th. For spoiling, burning, or destroying, his hay, wood, garments, deeds, securities, or other dead thing.

*2d. To his lands.*

- 6th. For entering a man's house, lands, &c. without license, whether owner, or only tenant of the same.
- 7th. For hunting on his grounds.
- 8th. For breaking fences, ditches, hedges, &c.
- 9th. For breaking his banks, opening his sluices, &c.
- 10th. For cutting his trees.
- 11th. For entering upon his fishery.
- 12th. For entering upon his possession, and treading down his grass, &c. cutting and carrying away his produce, ore, wood, &c.
- 13th. So trespass lies for injuries done by the cattle of another breaking into enclosures.†

- 4th. Cases in which the summons, or warrant, should be to answer in trespass on the case.

This is a very comprehensive action, and may be adopted in the following cases.

- 1st. For all deceits and frauds in contracts, by which damage accrues to the plaintiff, as for false representations, warranties, and the like.
- 2d. In all cases of imposition and knavery, by which the plaintiff is wronged, though there be no contract; as for cheating at dice, or other game, swindling him out of his money, by forgery, false tokens, or personating another.

\* Trespass is also a proper action for injuries to the person of a man, as assault and battery, false imprisonment and maim; but these injuries fall not under the civil cognizance of a justice.

† Some of these injuries, when complained of, frequently end in a contest about the title to the land; in which case, the justice will act as before directed.

- 3d. In all cases of malicious and vexatious prosecutions at law, by which injury is sustained.
- 4th. In cases of breach of trust, by one's attorney, agent or servant, by his surgeon, physician, taylor, smith, or other profession, acting ignorantly, carelessly or maliciously in their several undertakings, by which an injury is done to a man's person or property.
- 5th. In all cases of breach of official duty, as where a sheriff, constable, overseer, justice or other officer, neglects his duty or abuses the trust reposed in him by law, to the damage of another; as if a constable neglects to serve his precept, or a justice to issue one, when properly applied to.
- 6th. In all cases of negligence, whereby injury is done; as suffering fire by carelessness to burn the plaintiff's woods, or a dog to bite his person, a bull to gore his child.
- 7th. In all cases of nuisance.
- 8th. In all cases of unjust conversion of the plaintiff's property, which has come to the defendant's hands, by finding, delivery, accident, mistake, or by defendant's contrivance, and he refuses, upon demand, to give it up.
- 9th. For injuries to a man in the character of husband, father, master, guardian, or citizen, by enticing away a man's wife, debauching his daughter, inveigling his servant, spiriting away his ward, preventing his lawful vote. In short this action lies in every possible case, where an injury is received, without direct violence, and is of such a nature as not to come within any other prescribed form of action.

#### 5th. Cases of attachment.

The authority of a justice to issue an attachment, is founded on the attachment act, *Pat. 301, sec. 33*, which enacts, "That any justice of the peace within this state on application and affidavit made before him to the purpose aforesaid,\* shall, and is hereby required to issue an attach-

\* See form of affidavit hereafter.